

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 180.1 and 180.3
Title 14, California Code of Regulations
Re: Spot Prawn Conversion Program

- I. Date of Initial Statement of Reasons: April 7, 2004
- II. Date of Pre-adoption Statement of Reasons: May 19, 2004
- III. Date of Final Statement of Reasons: September 22, 2004
- IV. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: February 18, 2003
Location: Sacramento, CA
 - (b) Discussion Hearing: Date: May 4, 2004
Location: San Diego, CA
 - (c) Adoption Hearing: Date: June 25, 2004
Location: Crescent City, CA
 - (d) Confirmation Hearing: Date: August 5, 2004
Location: Bridgeport, CA

V. Update:

At the June 25 adoption hearing in Crescent City, the Commission approved the issuance of 11 non-transferable Tier 3 Trawl-to-Trap conversion permits for those vessels earning a minimum of 1000 "prawn points" based on prior spot prawn trawl catch history. The Commission also set the annual Tier 3 permit fee at \$1000. The new Tier 3 permits will authorize spot prawn trap fishing under the same conditions as Tier 1 permits, and the capacity goal for Tier 1 and Tier 3 vessels combined was set at 17 vessels. The Commission also approved the proposed modifications and reorganization of the existing regulations for clarity and consistency. No changes were made to existing regulations requiring the permittee be present on-board the vessel while fishing for spot prawn.

In adopting the prawn point system, the Commission selected a qualifying window period for Tier 3 permits of January 1, 1994 through December 31, 2001.

Prawn points will be issued for a vessel's catch history during this qualifying period according to the following criteria:

- One hundred prawn points will be given for each calendar year the vessel made spot prawn landings with trawl gear;
- One prawn point will be given for every 500 pounds of spot prawn the vessel landed with trawl gear; and
- One prawn point will be given for each landing of spot prawn a vessel made with trawl gear.

At the time of the adoption hearing, the proposed regulatory text provided with the Initial Statement of Reasons did not include an option that would allow Tier 3 permits to be permanently designated as non-transferable. It proposed that the Tier 3 permits, like Tier 1 permits, would be non-transferable only for a period of three years. Because the Commission selected to adopt regulations that are different from, yet were sufficiently related to, the originally proposed regulatory text, the Administrative Procedure Act requires that the changes be made available for an additional 15-day written comment period.

On July 6, 2004, the Commission issued a notification letter to all persons listed in subsections 44(a)(1) through 44(a)(4), Title 1, CCR, informing them of the extended comment period relating to non-transferability. An updated copy of the proposed regulatory text reflecting this modification was also included. The Commission then confirmed its decision at its August 5th meeting in Bridgeport, California.

Clarifying Changes to the Proposed Regulatory Text

Earlier this year, the Commission took action to amend Section 180.3, Title 14, CCR (Office of Administrative Law's ID # 04-0604-04s), in order to change the annual allowable take of spot prawn for Tier 2 permittees from 2,500 pounds to 5,000 pounds. The effective date of the new regulations is August 11, 2004. The Initial Statement of Reasons for the current rulemaking (Office of Administrative Law's Notice ID # 04-0420-04), dated April 7 2004, was prepared in advance of this effective date. Therefore, the final regulatory text of this rulemaking has been updated to reflect the amendments approved in the prior rulemaking. In addition to changing the allowable Tier 2 take limit, three additional changes were made in order to correct typographical errors in subsections (k) and (l).

Additional minor modifications were made to the proposed regulatory text from the text provided in the notice letter dated July 6, 2004. They are all non-substantive and grammatical in nature, as follows:

1. Subsection 180.3(a) Added the descriptor "spot prawn" to clarify that the trawl conversion program pertains only to the spot prawn trap fishery.

2. 180.3(e)(2) – Removed the words “a” and “the” for grammatical consistency in the subsection so that all references to “permits” are plural.
3. Subsection 180.3(l)(5) – Changed “Tiers” from plural to singular.
4. Subsection 180.3(n) – Included parentheses around the fee of \$1000 for clarity.

VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting Those Considerations:

Responses to comments received by the Commission prior to May 19, 2004 were included as an attachment ([Table 1](#)) to the Pre-Adoption Statement of Reasons. See [Table 2](#) (attached) which includes all comments received by the Commission since completion of the Pre-Adoption Statement of Reasons and the Department’s responses to those comments.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department Files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

Establishment of Tier 4 Permits: The Department considered and rejected the concept of a Tier 4 permit, which would include a certain number of individuals on a part time or lower-impact basis, by limiting their seasonal catches and the number of traps they may deploy. Tier 4 was designed in concept to mirror the existing Tier 2 permit program. This option was rejected for the following reasons: If the number of Tier 3 conversion permits issued is determined to be adequate, there is no need to consider allowing additional participants on a part-time basis. The conversion program is designed to include only those most reliant on the trawl fishery, and is not meant to compensate part-time prior participants by allowing them future part-time access. Furthermore, the Commission has supported the approach of phasing out the existing Tier 2 permittees. Tier 4 regulations would also come with substantial added burdens to Department enforcement, licensing and regulatory staff. Additionally, it would unnecessarily complicate the proposed conversion program.

Alternatively, the range of Tier 3 qualifying options, coupled with the “lottery” concept, would address the same need to equitably deal with displaced trawl fishermen while keeping the number of new trap fishermen to a level that will have minimal impact on the existing trap fishery. The Department also received negative input from both tiers of existing trappers, trawl fishermen and the Commission that they do not want to create another group of “second class citizens”. If the Commission wishes to consider any of these options it may direct the Department to include them, but at this time the Department is not recommending the Commission consider any Tier 4 options.

Consideration of “Grandfather Clause”: A number of fishermen that have historically trawled for spot prawn, but who have not been active since the mid 1990s or earlier, have inquired about what is known as the “grandfather clause” (Fish and Game Code Section 8101). This term refers to a provision of law that allows a fisherman, who has held a California commercial fishing license for 20 years and participated for one of those years for which a restricted access program is being developed, to potentially qualify for a permit in the initial year of the program. The initial year of the trap restricted access program (April 1, 2002 to March 31, 2003) has passed. In addition, the spot prawn trawl fishery has been eliminated and is not becoming a restricted access fishery. Through this conversion program, the Department would be adding additional permits to an existing restricted access program, rather than creating a new program.

There is no legal obligation on the part of either the Department or the Commission to make any accommodation for the displaced trawlers under the grandfather clause. The direction from the Commission was to transition displaced trawlers into the existing restricted access trap fishery. Since minimizing economic impacts was the Commission's primary concern, this relief is directed at those most impacted by the closure, i.e. those trawlers who were major participants in the spot prawn fishery. If a fisherman was that active, then there would be no need for him to rely on the grandfather clause to enter the restricted access trap fishery.

Restricted access fisheries are typically distinguished by species or gear; fishermen receiving permits in the conversion program would not be taking a different spot prawn species or using a different spot prawn trap, so the fishery in question is in fact the same restricted access fishery that currently exists.

Exclusive fishing zones: One option was suggested which would have restricted Tier 3 fishermen to the area north of a line due west from Pigeon Point in San Mateo County to the Oregon border. This was considered unreasonable in that the overwhelming majority of spot prawn landings were made south of this line. There are 65 10X10 NM DFG fishing blocks that have been historically important to the spot prawn trawl fleet; only 11 of these are north of Pigeon Point. There are no fishing blocks north of Pigeon Point which have been important historically to the spot prawn trap fishery.

Regional management has been recommended as one way to potentially mitigate for expected crowding and gear conflict on the fishing grounds. However, if the Commission selects a number of permits that does not result in excessive crowding to a degree that mitigation is necessary, there is no need to consider such regional management measures which are not resource-driven. Such regulations would also come with added burdens to Department enforcement staff, licensing and regulatory staff, and also would be burdensome to both current and future trap fishery participants. If the Commission wishes to consider areas of exclusive use for either Tier 1 or 3, they may direct the Department to include them. At this time, the Department is not recommending the Commission consider exclusive fishing zones for any trap fishery tier.

Establishment of Regional Permits: In discussions with fishery representatives, most believed that regional permits, in which, for example, a vessel would choose to fish in either northern or southern California but could not fish throughout the state, were not desirable. The Southern California Trawlers Association recommended that the Department establish a southern spot prawn management region south of Point Arguello, and that only boats berthed in the ports of Santa Barbara, Ventura, Port Hueneme, or Channel Islands Harbor be allowed to fish in that zone. The Department believes that this would discriminate against boat owners based out of the area who have fished in southern California in the past. As a result, the consideration of regional permits as an option was rejected.

Permit transferability: One option proposed would have made Tier 3 permits non-transferable. The Department believes that this would unfairly penalize Tier 3 permit holders and rejected this option.

The existing trap fishermen proposed that in addition to the three-year waiting period, that Tier 3 permits should have a landing requirement for transferability in order to prevent new permit holders from holding onto the permit just to sell it. The Department rejected this requirement because often when a landing requirement is associated with permit renewal or transferability, it results in unnecessary fishing simply to meet the requirement.

At their scoping sessions the Department heard suggestions to allow transferability of both Tier 1 and Tier 3 permits immediately, or on April 1, 2005. This option would likely decrease the transfer price of Tier 1 permits if it were allowed, and is not equitable considering that Tier 1 permittees have already completed two of the three-year waiting period for permit transferability.

Another option considered was to require a minimum of 60,000 pounds landed in a 4-year period in order for a Tier 3 permit to be transferable. The Department believes that this would unfairly penalize Tier 3 permit holders and rejected this option. If these same standards were applied to the Tier 1 fishermen, more than half of them would not meet this standard.

Another option considered and rejected was to allow the sale of Tier 1 and 3 permits to any individual or organization who wants to retire the permit. This would not be practical because the current restricted access trap fishery is vessel-based and requires any permit be transferred to a vessel owner.

Tier 2 permit transferability: An option was considered, and subsequently rejected, to convert Tier 2 permits to transferable permits. The initial basis for establishing Tier 2 permits was to accommodate those who either had not fished for spot prawns on a regular basis in the recent past or who had made relatively small or infrequent landings during that time. These permits are not transferable to discourage the potential increase in fishing effort which could jeopardize the sustainability of the fishery. In addition, when the capacity goal was established for Tier 1 permits, it was believed that if all Tier 1 permits were active, the estimated average annual harvest of spot prawns could be realized even in the absence of any Tier 2 permits.

Change in Fishing Season for Offshore Waters of Southern California:

A proposal was made by fishery representatives to change the closed season in waters greater than 70 miles from the mainland shore and south of a line drawn due west from Point Arguello from November 1 through January 31 (present regulations) to May 1 through July 31, similar to the closed season north of Point Arguello. While this action might enable spot prawn trapping effort to diffuse over a greater area and reduce potential gear conflicts, the Department had concern about opening an area during the peak egg-bearing season for spot prawns. The November-January closure in the southern California trap fishery was implemented to protect egg-bearing females. The Commission implemented a split season closure north of Point Arguello in order to allow for a year-round market of spot prawns and prevent a major gear conflict in the Monterey area between salmon trollers and spot prawn trappers in the months of May through July. As a result, the Department is not recommending the Commission consider any changes that would allow additional harvest during peak egg-bearing seasons.

Another option considered and rejected was to have a uniform closed season of November 1 to January 31 throughout the state. This would protect the resource during the peak egg-bearing season and could have some benefit in preventing effort shifts during regional season closures. However, it would eliminate the present year-round market for spot prawns. There is a strong market for this resource during the late fall/early winter holiday period. The Department considered the economic consequences of this action versus the potential biological risk to the resource and concluded that it was acceptable to allow some level of harvest (approximating one third of annual trap landings) north of Point Arguello during the peak egg-bearing season for spot prawns.

Trap Limit Options

Several options were considered and rejected by the Department. Trap limits are not germane to the conversion program but instead involve existing regulations which are allocation-based rather than resource-based. Both trap and trawl fishermen believe that restricting Tier 3 permits to less than 500 traps would not be economically viable. Since Tier 3 and Tier 1 will be on equal footing in regard to other fishery provisions, there is no need to consider additional variations on trap limits at this time. Effort caps or reductions through implementation of new trap limits may be something to consider if there is a concern with excessive trap gear once the number of participants is settled.

(b) No Change Alternative:

If additional restricted access spot prawn trap vessel permits are not offered to spot prawn trawl fishermen, the economic hardship incurred by these individuals from the spot prawn trawl fishery closure will continue. During the first 12 months of the restricted access spot prawn trap fishery (April 2002-March 2003), total statewide landings were 180,000 pounds, less than half of the average annual statewide total of 392,000 pounds for trap and trawl combined during 1990 to 2001. Since it appears that the resource can continue to provide an annual average harvest significantly greater than 180,000 pounds without known harmful biological impact, it is reasonable for the Commission to consider ways to offset some of the impact of the trawl closure by allowing some additional trap fishery catch and effort.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete With Businesses in Other States.

The proposed action would allow a limited number of trawl vessels to convert to trap gear. Future trap fishing opportunities would be offered to vessel owners who qualify for issuance of a Tier 3 permit, and therefore would provide a future economic benefit for both these vessels and the

fish buyers they would supply. Alternatively, depending on the number of new trap vessels allowed in the fishery, the current Tier 1 trap fishery potentially may suffer negative economic consequences as the result of increased competition on the fishing grounds and in the marketplace.

Conversion of trawl vessels to trap vessels could have a negative effect on the existing trap fishery participants, who are also considered individual businesses. If historic trawling grounds do not become productive new trapping grounds, and there is gear congestion within the historic trapping areas due to the addition of Tier 3 trap vessel permittees, current trap permittees could experience some unquantifiable loss of income. Current Tier 1 trap permits, which may be sold beginning April 1, 2005, may also lose some market value as the total number of trap permits increases.

Every spot prawn buyer is considered a business. Any transfer of market share, or competition, between the existing trap fishermen and newly converted fishermen would not result in a loss of business or the ability of California businesses to compete with businesses in other states. In fact, the buyers would likely benefit if more spot prawns were harvested and available for purchase.

Local economies and port communities to the north of Monterey County may benefit from spot prawn fishing activities by newly converted trawl fishermen utilizing traps in what were historically trawl grounds for prawns should trap fishermen successfully attempt to utilize these currently unfished areas. Trap fishermen typically land nearly all their spot prawn (99 percent by value) in coastal ports south of Santa Cruz County. Department landings data from the years 2001 and 2002 indicate that less than 1 percent (by value) of trap caught spot prawn are landed either in Santa Cruz County or to the north. Conversely, spot prawn trawl fishermen, in the years 2001 and 2002, landed over 32 percent (by value) of their prawns in ports located in Santa Cruz County and to the north. In the years 2001 and 2002, the prawn trawl landings in the coastal counties of Santa Cruz north to the Oregon border represented as much as \$864,000 in total aggregate economic output demand. Of this total aggregate output demand, approximately 32 percent is spent locally for fuel, repairs, ice, bait, and various consumables in the port communities.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. However, depending on which options are ultimately chosen, there may be incremental fees levied on fishermen converting to prawn trap fishing. Tier 3 permit fees may take the form of trap permit fees (\$250-1000) and in some cases permit transfer fees (\$200). New Tier 3 permittees will have to invest in traps and associated rigging, which could run \$35 to \$75 per trap, with no guarantee that converting to a new gear type will be profitable or produce an income equivalent to what they realized in past years using trawl gear.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Updated Informative Digest/Policy Statement Overview

In February 2003, the Fish and Game Commission adopted a prohibition on the use of trawl gear for the commercial take of spot prawn, *Pandalus platyceros*, (OAL File #03-0314-03s) resulting in displacement and economic impact to approximately 45 commercial trawl vessels which had previously participated in the fishery annually. The Commission directed the Department to develop options for a conversion program that would add a limited number of additional permits to the existing spot prawn restricted access trap fishery. These permits would be available to owners of spot prawn trawl vessels who met minimum vessel-based landing requirements.

Current regulations establish the restricted access spot prawn trap fishery program with Tier 1 and Tier 2 permits, which became effective April 1, 2002. For the 2003-2004 fishing season, seventeen Tier 1 permits and five Tier 2 permits have been issued by the Department. Tier 3 trawl conversion permits are proposed for issuance that would regulate trap fishing activity subject to the same conditions that apply to the existing Tier 1 spot prawn trap vessel permits. The Department proposes that the Commission consider issuing between 1 and 17 Tier 3 permits, and further proposes that the Tier 1 and Tier 3 combined capacity goal be set at 17 permits; the same as the current 17 vessel capacity goal in place for only Tier 1 vessels.

When selecting the optimum number of conversion permits to issue, it will be critical for the Commission to balance the potential harm to the existing trap fishery participants who would face increased competition against the economic loss already suffered by vessel owners now precluded from taking spot prawn utilizing trawl gear, many of whom relied on the fishery for nearly 100 percent of their income.

The goal of the conversion program is to provide continued access to the spot prawn resource for those fishermen who most relied on the spot prawn trawl fishery prior to its closure in 2003. The Department has developed a range of initial qualifying criteria that allows the Commission to select from traditional minimum landings levels or a point system, as described below.

The Department proposes the Commission consider limiting the trawl fishery catch history to a qualifying window of 1994-2001, although the Commission may select a window period that starts any time between 1990 and 2001, and ends any time between 1999 and 2002. This wide range of dates is provided by the Department based on comments received from interested or affected individuals or groups.

Tier 3 Initial Issuance Criteria Options

Since trawl landings of spot prawn are generally larger than those made by trap, a range of volumes that was much larger than those used in the qualifying criteria for Tier 1 trap permits is being proposed. The Commission may select qualifying criteria that would include a minimum catch level over many years in total (between 1,000 to 150,000 pounds), or a minimum annual catch level (1,000 to 20,000 pounds) in each year or in each of a number years, participation (between 1 and 100 landings) in each year or in each of a number years, or the number of landings (1-500) over one or more years or over a number of years.

Another qualifying option factors the purchase of the 2000-2001 spot prawn trawl observer permit into the qualifying criteria. This option, in combination with others, would recognize the voluntary participation of these vessel owners in the management of the fishery.

To demonstrate recent participation in the fishery, an option to have at least one spot prawn landing in either 2000 and/or 2001 is provided for use in conjunction with a window period that does not encompass those years

Prawn Point Option

In order to preserve diversity in the composition of the trap fishery participants and make the issuance of Tier 3 permits a more equitable process, the Department also created an option utilizing a prawn point system to determine qualification criteria for issuance of a Tier 3 permit. This point system could be used to qualify for initial permit issuance or to qualify vessels for a lottery that may be held for some or all of the converted permits available. As proposed, prawn points would be awarded to a vessel based on three factors:

- One hundred prawn points would be given for each calendar year the vessel made spot prawn landings with trawl gear during the qualifying period;
- One prawn point would be given for every 200-2000 pounds of spot prawn the vessel landed with trawl gear during the qualifying period; and
- One prawn point would be given for each landing of spot prawn a vessel made with trawl gear during the qualifying period.

The Commission may select from a range of 600-1600 prawn points to qualify for a permit and/or a lottery.

Lottery Option

Whether traditional landings criteria or the prawn point system is selected for initial permit issuance, the line that separates the qualifiers from the non-

qualifiers is difficult to draw from a policy standpoint. If the Commission believes, for example, that 11 individuals are more or less equally deserving of a conversion permit, yet they wish to issue fewer than 11 permits, the Commission may elect to have a lottery for some or all of the permits. If the proposed lottery is adopted, the Department will notify vessel owners who meet the eligibility requirements.

Regardless of what initial issuance criteria are selected, some vessel owners who landed spot prawns in the past will not qualify for a permit. The Department is trying to accommodate those vessel owners who relied most heavily on the spot prawn trawl fishery in terms of factors described above, while at the same time attempting to avoid fishery overcapitalization and gear conflicts in available trapping grounds.

Transferability of Tier 3 Permits

A three-year waiting period from the initial issuance of Tier 1 permits is required before they can be transferred, with no minimum landing requirements to qualify for transfer. Tier 1 permits may be transferred beginning on April 1, 2005. To be consistent with Tier 1, a three-year waiting period is proposed for the transfer of Tier 3 permits, also with no minimum landings requirement, making them fully transferable on October 1, 2007.

Making Tier 3 permits transferable at the same time as the Tier 1 permits would result in inequity to Tier 1 holders who have had to wait for three years to sell their permits. Moreover, since very few Tier 1 permits are likely to come available on the market after April 1, 2005, their value is likely to be high. If Tier 3 permits were also transferable beginning in 2005, more permits would be on the market, the value of the permits would decrease, and they would most likely be sold to individuals interested in immediately participating in the fishery at high effort levels.

Fees and Filing Deadlines

The Department proposes that Tier 3 permits have a permit fee of (\$250.00-\$1000.00), late fees of \$50.00, and a \$200.00 transfer fee. Although Tier 1 and 2 permittees currently have a \$250.00 permit fee, the price is not commensurate with the value of the resource and the amount of Department time spent managing this small but valuable fishery. Application deadlines for initial issuance of Tier 3 permits, including deadlines for late fees, and for appealing denied permits, are proposed to be equivalent to the time increments required for Tier 1 permits. All other administrative aspects of the Tier permit structure are proposed to be the same as those of Tier 1 permits.

Vessel Owner on Board Permitted Vessel

Current regulations require the owner of the permitted spot prawn trap vessel to be on board when spot prawns are being taken, except that one additional operator may be designated during a license year. The Tier 1 trap permittees have proposed amendment to this regulation to allow a replacement operator only in the case of a medical/hardship case for both Tier 1 and 3 permittees. They believe that hired operators have little stake in the fishery and frequently create a disorderly fishery because they lack experience setting trap strings and have little regard for the trap gear already on the grounds. However, the trawl fishermen believe that there should be no restriction on replacement operators. The Commission may choose the option of allowing either one replacement operator or any number of replacement operators. In addition the Commission may choose the option of allowing for a replacement operator or operators only in the case of a medical or hardship reason.

Reorganization and Clarification of Existing Regulatory Language

Several non-substantive changes are proposed to the existing regulatory language of 180.1 and 180.3 for clarity, consistency and ease of enforcement.

Section 180.1 on Spot Prawn Fishing defines restrictions on traps used in the fishery. In subsection (a) the reference to the closed season in 2000 is proposed for removal since the effective dates have passed. Subsection (a)(1) specifies that traps may be set and baited beginning at 0600 hours on January 31. This is the last day of the closed season in southern California. Clarifying language was added to specify that the January 31 date applies only to waters south of a line drawn due west from Point Arguello, and traps used north of the Point Arguello line may be set and baited beginning at 0600 hours on July 31, the last day of the closed season in northern California.

Clarifying language is proposed to be added to (a)(2) to specify that traps must be out of the water prior to the beginning of the closed season of May through July north of Point Arguello as is already required during the closed season of November through January south of Point Arguello. Subsection (c) (Trap Limits) would clarify and make specific the trap limits for each of the three permit tiers. The Tier 2 trap limit previously contained in Section 180.3 (b)(2)(C) is proposed to be moved to subsection 180.1(c)(2). Subsection (e), which dealt with an observer fee requirement for the specific period of July 14, 2000 to March 31, 2001, is proposed for removal since effective dates have expired.

Section 180.3 defines the conditions, qualifying criteria, and administrative details of a two-tiered restricted access spot prawn trap fishery. The Section is proposed to be modified so that existing regulations governing the Tier 1 fishery

also apply to the Tier 3 fishery. This requires reorganization of existing regulatory text defining permit conditions, initial issuance criteria and transferability provisions, resulting in the addition of new subsection headings throughout for clarity. Subsection (b) will be retitled and a classification for Tier 3 or conversion permits will be added. Subsection (c) becomes specific to the initial issuance criteria for each type of permit. Subsection (d) now addresses a capacity goal of 17 permits for Tiers 1 and 3 combined.

Existing provisions for mechanisms dealing with overcapacity and under capacity situations are proposed for elimination since they only involved the upgrade of a Tier 2 permit, or the 2 for 1 sales of a Tier 1 permit. Given the number of permits issued for the 2004-2005 fishing season, and with the future addition of Tier 3 permits, neither mechanism for transferability is possible given the future capacity of the fishery following implementation of the conversion program.

Proposed subsection (e) now specifies the initial issuance application deadlines for all three types of permits. The proposed application for Tier 3 permits is incorporated by number and reference. Subsection (g) addresses permit renewal for all three types of permits and again incorporates the applications by number and reference. Other non-substantive changes were made in the subsection for clarification.

In subsection (l) the change of ownership of a spot prawn trap vessel permit was addressed for Tier 3 with the same requirements as for Tier 1, although different dates shall apply if adopted. Regarding change of ownership of a spot prawn trap vessel permit; existing regulatory language was clarified so that in the event of death of a transferable permit holder, the permit may be transferred to the decedent's estate, rather than only to an heir. Proposed regulations would still require that the application for transfer be received by the Department within one year of the decedent's death. In subsection (m) appeal provisions for initial issuance of Tier 3 are outlined and parallel Tier 1 only with different deadlines. In subsection (n) dealing with fees, Tier 3 was added with fees identical to those of Tier 1 with the exception of the permit fee where a range is provided.

At the June 25 adoption hearing in Crescent City, the Commission approved the issuance of 11 non-transferable Tier 3 Trawl-to-Trap conversion permits for those vessels earning a minimum of 1000 "prawn points" based on prior spot prawn trawl catch history. The Commission also set the annual Tier 3 permit fee at \$1000. The new Tier 3 permits will authorize spot prawn trap fishing under the same conditions as Tier 1 permits, and the capacity goal for Tier 1 and Tier 3 vessels combined is 17 vessels. The Commission also approved the proposed modifications and reorganization of the existing regulations for clarity and consistency. No changes were made to existing regulations requiring the permittee be present on-board the vessel while fishing for spot prawn.

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Additional minor modifications were made to the proposed regulatory text from the text provided in the notice letter dated July 6, 2004. They are all non-substantive and grammatical in nature, as follows:

1. Subsection 180.3(a) Added the descriptor “spot prawn” to clarify that the trawl conversion program pertains only to the spot prawn trap fishery.
2. 180.3(e)(2) – Removed the words “a” and “the” for grammatical consistency in the subsection so that all references to “permits” are plural.
3. Subsection 180.3(l)(5) – Changed “Tiers” from plural to singular.
4. Subsection 180.3(n) – Included parentheses around the fee of \$1000 for clarity.

ADDENDUM TO FINAL STATEMENT OF REASONS

On November 17, 2004, the Commission mailed a Notice of Addition of Documents and Information to Rulemaking File and copies of the documents which were added to the rulemaking file (FG 1422 and Cost of the Spot Prawn Conversion Program) to those persons identified in subsection (b) of Section 11347.1 of the Government Code.

No comments on the documents were received during the 15 day period (November 17 – December 2, 2004).

The Commission has determined that the Economic and Fiscal Impact Statement (Form 399) submitted in OAL File 04-1005-05s, Item 19, is still valid and does not require concurrence by the Department of Finance.

The fees for Initial Issuance and Renewal of Tier 3 Spot Prawn Trap Vessel Permits (subsections (n)(1) and (n)(2) of Section 180.3, Title 14, CCR) combined with the landing taxes paid by commercial fishermen [pursuant to Article 7.5, of Chapter 1, of Part 3, of Division 6, of the Fish and Game Code (subsection (a)(2) of Section 8051)] are related to the actual cost of the program as shown in the Cost of the Spot Prawn Conversion Program.

Fees for late applications for Initial Issuance and Renewal of Spot Prawn Trap Vessel Permits (subsections (n)(5) and (n)(6) of Section 180.3, Title 14, CCR) are determined by Statute (Fish and Game Code Section 7852.2).

The Commission has incorporated application forms (FG 1422 and FG 1424) of this rulemaking by reference because it would be impractical to publish the forms in the California Code of Regulations due to the length of the forms and the fact that the forms are revised annually and are of limited use. FG 1424 was available upon request from the Fish and Game Commission office from April 30, 2004 through December 2, 2004. FG 1422 was available on request from the Fish and Game Commission office from November 17, 2004 through December 2, 2004.